

AGREEMENT REGARDING USE OF TRANSFER STATION

THIS AGREEMENT is made and entered into this 19th day of March, 1993 between the City of Vallejo, a municipal corporation of the State of California ("Franchisor" or "City"), and Vallejo Garbage Service, Inc., a California corporation ("Franchisee").

RECITALS

A. Franchisor and Franchisee entered into an agreement dated July 1, 1987 (the "Franchise Agreement") under which Franchisee performs solid waste collection and disposal services for residents and commercial, industrial and governmental establishments within the City.

B. The parties anticipate that the American Canyon Sanitary Landfill, in which Franchisee presently disposes of the solid waste collected pursuant to the Franchise Agreement, will be closed by or soon after October 1, 1993. Franchisor has proposed to form a Joint Power Authority with the City of Napa and the County of Napa to construct and operate a solid waste transfer station to consolidate solid waste collected in these jurisdictions for bulk transport to solid waste landfills located in northern Solano County.

C. As an efficient form of solid waste disposal, the proposed transfer station will result in significant cost savings for the citizens of the Cities of Vallejo and Napa and Napa County. Franchisee's commitment to use the proposed transfer station for disposal of the City's solid waste is important to insuring the efficient use and economic success of the proposed transfer station. In order to implement this commitment, to reduce costs for the ratepayers of the City of Vallejo and to insure proper planning for the conversion from use of American Canyon Sanitary Landfill to the proposed transfer station, the parties desire to enter into this Agreement.

AGREEMENT

1. Definitions. For purposes of this Agreement, the following words or phrases shall have the following meanings:

a. "Solid Waste" shall mean all waste material collected by Franchisee pursuant to the Franchise Agreement and in those portions of Solano County immediately contiguous to the City.

b. "Transferable Solid Waste" shall mean all Solid Waste that Franchisee, in its sole discretion, elects not to process for purposes of recycling or designate for recycling by others.

c. "Joint Power Authority" or "JPA" shall refer to that joint power authority proposed to be formed by Franchisor, the City of Napa and the County of Napa for the purposes of constructing and operating a solid waste transfer station to be located in the County of Napa.

d. "Transfer Station" shall mean the solid waste transfer station that is proposed to be constructed and operated by the JPA.

2. Use of Transfer Station. If the Transfer Station is constructed and operated, and subject to the exceptions and conditions contained herein, Franchisee will deliver to the Transfer Station all Transferable Solid Waste for so long as the Transfer Station is legally permitted to and does accept solid waste or for the term of the Franchise Agreement, whichever period terminates earlier. This obligation shall become effective thirty (30) days after written notice by the JPA or Franchisor to Franchisee that the Transfer Station is, or on a specified date certain will be, able and legally permitted to accept solid waste for purposes of consolidation and transportation.

3. Retention of Flow Control Rights. Except as expressly stated otherwise, nothing in this Agreement shall be construed to alter the right of Franchisee under the Franchise Agreement to control the manner of disposal of Solid Waste. In the event (a) Franchisee's obligations under Section 2 of this Agreement terminate for any reason or (b) the Transfer Station is unable or unwilling to accept Transferable Solid Waste, Franchisee shall have the exclusive right to determine the manner of disposal of the Transferrable Solid Waste.

4. Agreement With JPA. Franchisee's obligations under Section 2 of this Agreement shall not become effective unless and until Franchisee and the JPA have entered into a written agreement providing Franchisee with the following rights with respect to the Transfer Station: (a) that the JPA will deliver for disposal from the Transfer Station to B&J Sanitary Landfill a quantity of waste equivalent to the quantity of Transferable Solid Waste delivered by Franchisee to the Transfer Station, this obligation to exist only for so long as B&J Sanitary Landfill and Franchisee are under common ownership; (b) that Franchisee will pay fees for the disposal (as opposed to the transfer) of the Transferrable Solid Waste

directly rather than to the Transfer Station; and (c) that the JPA will give adequate notice to Franchisee of the JPA's intent to request bids for a contract to operate the Transfer Station, will allow Franchisee to submit a bid for such contract and will fairly evaluate any bid submitted by Franchisee. The inclusion of this Section is not intended to subject the JPA to arbitration of any disputes it might have with Franchisee, except as provided in Section 9.

5. Recovery of Increases in Transfer Fees. In the event the JPA increases any fees or other charges for Franchisee's use of the Transfer Station, Franchisor will adjust the rates Franchisee is permitted to charge its customers for services rendered under the Franchise Agreement in order that Franchisee may fully recover the increase in transfer fees and any associated profit. Said adjustment will occur pursuant to Sections 4c and 4d of the Agreement Regarding The Setting Of Rates, dated March 19, 1993, between Franchisor and Franchisee (the "Rate-Setting Agreement").

6. Contingency Planning. In the event the American Canyon Sanitary Landfill closes before the Transfer Station is able and legally permitted to accept solid waste, Franchisor and Franchisee may determine that it is in the best interests of the ratepayers to acquire new equipment for the purpose of hauling solid waste directly to an alternative landfill following the closure of the American Canyon Sanitary Landfill. Franchisor acknowledges that Franchisee will require six months' advance notice in order to acquire such direct haul equipment.

a. Acquisition of Direct Haul Equipment. In the event Franchisor and Franchisee determine that Franchisee should purchase direct haul equipment, Franchisor will increase the rates Franchisee is permitted to charge its customers to allow recovery of the purchase price of the new equipment, such rate increase to occur pursuant to Sections 4c. and 4d. of the Rate-Setting Agreement. In the event Franchisor and Franchisee determine that Franchisee should acquire direct haul equipment, Franchisor will permit Franchisee to recover through its rates the entire lease expense or purchase price plus interest expense of the direct haul equipment, without regard to the construction and operation of the Transfer Station. Said recovery shall occur over a period not to exceed sixty (60) months, commencing on the date of purchase of the direct haul equipment.

b. Use of Existing Equipment. In the event the American Canyon Sanitary Landfill closes before the Transfer Station is able and legally permitted to accept solid waste and (1) Franchisor and Franchisee do not

determine that Franchisee should purchase direct haul equipment or (2) Franchisor and Franchisee fail to determine that Franchisee should purchase direct haul equipment six months in advance of the closing of the American Canyon Sanitary Landfill, Franchisee and Franchisor agree to cooperate to accomplish the disposal of the Solid Waste in an efficient, reasonably practicable manner, including without limitation delivery of the Solid Waste to the Acme Transfer Station in Martinez, California. Franchisor acknowledges that without direct haul equipment Franchisee may be unable adequately to perform its duties under the Franchise Agreement within the constraints placed on its garbage collection operations by City Ordinances. In the event conditions (1) or (2) of this subparagraph occur, Franchisor will take all reasonable steps necessary to allow Franchisee to operate its existing equipment at whatever hours Franchisee and Franchisor determine are reasonably necessary, will otherwise make reasonable accommodations to permit Franchisee to perform its duties under the Franchise Agreement, and will increase the rates Franchisee is permitted to charge its customers to compensate Franchisee for any added labor, equipment, maintenance or other costs that Franchisee should incur, said increase to occur pursuant to Sections 4c. and 4d. of the Rate-Setting Agreement. Notwithstanding anything to the contrary in this paragraph, if the Transfer Station is not able and legally permitted to accept the Transferrable Solid Waste within twelve (12) months after the date the American Canyon Sanitary Landfill ceases to accept solid waste for disposal from Franchisee, Franchisee shall have the exclusive right to determine the manner of disposal of the Transferrable Solid Waste.

Disputes arising under this Section 6 shall not be subject to alternative dispute resolution pursuant to Section 10, except that (1) disputes regarding Franchisee's recovery of the acquisition or leasing costs for direct haul equipment under Section 6a and (2) disputes regarding Franchisee's recovery of additional costs under Section 6b shall be subject to alternative dispute resolution. Alternative dispute resolution shall be available for disputes regarding Franchisee's recovery of additional costs under Section 6b only as to disputes arising prior to the date on which the Transfer Station is able, legally permitted and willing to accept the Transferrable Solid Waste or prior to the date twelve (12) months after the date the American Canyon Sanitary Landfill ceases to accept solid waste for disposal from Franchisee, whichever period is shorter.

7. Franchisee's Unconditional Duty to Perform.
In the event of a breach of this Agreement by Franchisor, Franchisee shall have the unconditional duty to continue

performance of its obligations under Section 2 unless and until it is relieved of those obligations as a result of alternative dispute resolution as set forth in Section 10. It is understood and agreed by Franchisee that any breach of the provisions of this Section or Section 2 by Franchisee will cause Franchisor irreparable harm for which recovery of only money damages would be inadequate, and that Franchisor shall therefore be entitled to obtain timely injunctive relief from a court of competent jurisdiction, including without limitation a temporary restraining order and preliminary injunction, to protect its rights under this Agreement, in addition to any other remedies available to Franchisor under Section 10 of this Agreement.

8. Relationship to the Rate-Setting Agreement. A breach of the Rate-Setting Agreement shall not be considered a breach of this Agreement; provided, however, that a breach of the Rate-Setting Agreement in connection with the obligation of the Franchisor to adjust Franchisee's rates under Sections 5, 6a and 6b of this Agreement will be deemed a breach of this Agreement.

9. Rights of the Joint Power Authority. The JPA's rights and remedies under this Agreement shall be limited to the power to compel specific performance of this Agreement by the Franchisee; provided, however, that the JPA may not call for alternative dispute resolution regarding this Agreement under Section 10 unless (a) the JPA has given the parties thirty (30) days prior written notice of its belief that Franchisee is in breach of the Agreement and (b) Franchisor fails within the thirty day notice period to resolve the dispute or to institute alternative dispute resolution regarding the dispute. In seeking to compel specific performance, the JPA shall have no greater procedural and substantive rights and remedies than would the Franchisor, and the JPA shall be subject to the same legal and factual defenses as the Franchisor would be were it seeking the same relief.

10. Dispute Resolution.

a. Call for Alternative Dispute Resolution. If the parties are unable to resolve a dispute arising under this Agreement in a cooperative manner, either party may call for alternative dispute resolution ("ADR"), as hereafter described. The party calling for ADR shall serve notice in writing upon the other party setting forth the question or questions to be resolved. The other party may within twenty (20) days of receiving this notice serve a responsive written notice of any questions that it intends to be resolved during the ADR proceeding. Within thirty (30) days after service of

the call for ADR, the parties shall meet and attempt to resolve the dispute without ADR. Unless otherwise awarded pursuant to subparagraph 10c, the costs of the ADR shall be borne equally by the parties.

b. ADR Proceedings. Within thirty (30) days after a call for ADR under subparagraph 10a, each side to the dispute shall select a mediator/arbitrator from the Judicial Arbitration and Mediation Service ("JAMS"), or such other organization or individuals as may otherwise be agreed by the parties. Within twenty (20) days after their designation, these two shall select a third mediator/arbitrator. The three persons so selected shall preside over the ADR proceeding. ADR shall be conducted in the City in accordance with the provisions of the California Arbitration Act (Code Civ. Proc. §§1280-1296). In addition to the powers conferred by the California Arbitration Act, the mediator/arbitrators shall have authority to order such other discovery as they deem appropriate for a full and fair hearing of the case. A determination on the merits shall be rendered in accordance with State law to the same extent as if the dispute were pending before a superior court of the State. The decision of the mediator/arbitrators in the matter shall be limited to the matters specified in the call for ADR or in the responsive notice of questions and shall be final and binding on the parties, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

c. Fees and Costs. The mediator/arbitrators in the ADR proceedings may award to either party reasonable attorneys' fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred directly or indirectly in connection with the proceedings.

d. Implementation. Franchisor and Franchisee agree promptly to take any and all steps necessary to implement any award that may be rendered in connection with an ADR proceeding brought under this paragraph or any decision that may be rendered by a court of competent jurisdiction with respect to this Agreement.

11. Legal Expenses. In the event Franchisee shall prevail in any legal action brought by either party to enforce an award entered pursuant to Section 10, Franchisee shall be entitled to treat the reasonable attorneys' fees and costs incurred by Franchisee in connection with its participation in such action as an Allowable Expense under Sections 1e and 4 of the Rate-Setting Agreement and to recover the entirety of such reasonable fees and costs as part of its ratebase during the Rate Year (as defined in the

Rate-Setting Agreement) commencing on October 1 immediately following the termination of such action.

12. Notices. All notices required under this Agreement shall be sent by telecopy and shall be personally delivered or mailed by certified or registered mail, postage prepaid, as follows:

If to Franchisor address to:

City of Vallejo
555 Santa Clara Street
Attn: David Finigan, Assistant City Manager
Telecopy Number: 707/648-4426

If to Franchisee address to:

Vallejo Garbage Service, Inc.
2021 Broadway
Attn: Bruce Gondry, General Manager
Telecopy Number: 707/552-4126

or to such other address as either party shall specify by written notice so given. Notices shall be deemed to have been given and received as of the date so delivered, if personally delivered, or three (3) business days after being deposited in the U.S. mail.

13. Waiver. No waiver by either party of any one or more defaults or breaches by the other in the performance of this Agreement shall operate or be construed as a waiver of any future defaults or breaches, whether of a like or different character.

14. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. This Agreement supersedes any and all other communications, representations, proposals, understandings or agreements, either written or oral, between the parties hereto with respect to such subject matter. This Agreement may not be modified or amended, in whole or in part, except by a writing signed by both parties hereto.

15. Severability. If any provision of this Agreement is declared invalid or unenforceable, then such portion shall be deemed to be severable from this Agreement and shall not affect the remainder hereof.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, including any regulation, ordinance, or other requirement of any governmental agency having or asserting jurisdiction over the collection services provided hereunder.

Franchisee:

VALLEJO GARBAGE SERVICE, INC.

By


General Manager

Franchisor:

CITY OF VALLEJO, CALIFORNIA

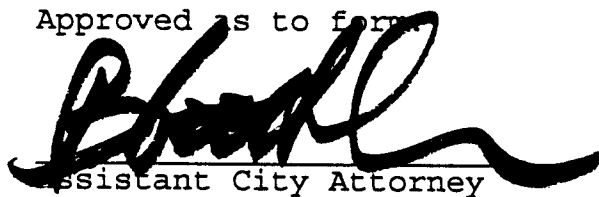
By


City Manager

Attest


City Clerk

Approved as to form


Assistant City Attorney

3312
AGREEMENT NO. _____SOUTH NAPA WASTE MANAGEMENT AUTHORITY
JOINT EXERCISE OF POWERS AGREEMENT

This AGREEMENT is entered into this 16th day of March, 1993 by and between the CITY OF VALLEJO, a municipal corporation, and the COUNTY OF NAPA, a political subdivision of the State of California (hereinafter referred to as "MEMBERS").

WITNESSETH:

WHEREAS, the American Canyon Sanitary Landfill has served as a regional landfill for the MEMBERS for over the last forty years; and

WHEREAS, due to the pending closure of the American Canyon Sanitary Landfill, the development of a solid waste transfer facility which will facilitate the consolidation and transfer of solid wastes for disposal at more distant landfill sites, is necessary; and

WHEREAS, the ability for the development of long term shared risk mechanisms to fund the preventive measures necessary to prevent contamination at a closed landfill appears to be key to economical management of the solid waste stream served at present by the American Canyon Sanitary Landfill; and

WHEREAS, each of the MEMBERS has the power to provide for solid waste processing, transfer and disposal services, including but not limited to the acquisition, construction, financing, refinancing, maintaining, operating, rate setting, rate collection, and regulation of a transfer facility; and

WHEREAS, each of the MEMBERS has the power to take whatever steps are necessary to insure against liability claims, including but not limited to, liability for hazardous waste clean-up under federal laws such as the Comprehensive Environmental Response, Compensation and Liability Act (Public Law No. 96-510, 94 Stat.2767); and

WHEREAS, the MEMBERS believe that by combining their separate powers they can process, transport and dispose of solid waste, and insure against public liability for problems related to solid waste landfill closure more effectively and economically than if they exercise those powers separately; and

WHEREAS, the Joint Powers Act (Government Code Sections 6500, et seq.) authorizes the MEMBERS to enter into agreements for a service, such as solid waste management and insurance against liability arising in connection with such management, which each MEMBER could have secured independently, but which they desire to have performed by or arranged for by a separate legal entity for the mutual and most efficient benefit of both of the MEMBERS; and

WHEREAS, the MEMBERS desire by this AGREEMENT to establish and confer upon a separate legal entity, the SOUTH NAPA WASTE MANAGEMENT AUTHORITY, authority to exercise jointly their respective powers and such additional powers as are available under the Joint Powers Act (Government Code Sections 6500, et seq.) for the purpose of establishing and arranging for the benefit of all the MEMBERS, the operation of a transfer facility to process, transport and dispose of the future solid waste stream now served by the American Canyon Sanitary Landfill and, to the extent needed and desired by the MEMBERS, for the purpose of minimizing and insuring against any public liability related to past disposal of solid waste at the American Canyon Sanitary Landfill, following closure thereof.

NOW, THEREFORE BE IT AGREED, pursuant to Government Code Sections 6500 et seq., as follows:

Adoption of the South Napa Waste Management Authority (SNWMA).

1. The foregoing recitals are true and correct.
2. The MEMBERS create the SOUTH NAPA WASTE MANAGEMENT AUTHORITY in accordance with the powers, terms and conditions set forth in Exhibit A, attached hereto and incorporated by reference herein.
3. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

IN WITNESS WHEREOF, the MEMBERS have caused this AGREEMENT to be duly executed and attested by their respective officers, duly authorized so to act, as of the date set forth in the first paragraph of this AGREEMENT.

COUNTY OF NAPA:

By Vince Ferriola
VINCE FERRIOLE, Chairman of the
Napa County Board of Supervisors

DATED: 3/18/93

Teri Sisson Deputy
ATTEST: Clerk of the Napa County
Board of Supervisors

Wester
APPROVED AS TO FORM:
Napa Counsel

CITY OF VALLEJO:

By Anthony Intintoli
ANTHONY INTINTOLI, Mayor of the
City of Vallejo

DATED: 3/17/93

Alvin Clement
ATTEST: Clerk of the
City Council of Vallejo

Bull
APPROVED AS TO FORM:
Vallejo City Attorney

APPROVED MAR 16 1993
BOARD OF SUPERVISORS
COUNTY OF NAPA

MARY JEAN MCLAUGHLIN
CLERK OF THE BOARD

Lori J. Bush Deputy

EXHIBIT A

**SOUTH NAPA WASTE MANAGEMENT AUTHORITY
JOINT EXERCISE OF POWERS AGREEMENT**

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**SOUTH NAPA WASTE MANAGEMENT AUTHORITY
JOINT EXERCISE OF POWERS AGREEMENT**

SECTION 1. DEFINITIONS

The terms defined in this Section that are capitalized in this AGREEMENT have the following meanings:

"ACT" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Sections 40000 et seq.) and all regulations adopted under that legislation, as that legislation and those regulations may be amended from time to time.

"AGREEMENT" means this joint exercise of powers agreement, as it may be amended from time to time.

"AUTHORITY" means the SOUTH NAPA WASTE MANAGEMENT AUTHORITY (SNWMA), a joint exercise of powers authority created by the MEMBERS pursuant to this AGREEMENT.

"BOARD" means the BOARD of DIRECTORS of the AUTHORITY.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act (Public Law No. 96-510, 94 Stat.2767).

"DIRECTOR" means the representative appointee of a MEMBER to the BOARD.

"FISCAL YEAR" means the period commencing on each July 1 and ending on the following June 30.

"GOVERNMENT CODE" means Articles 1, 2 and 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code (California Government Code Sections 6500 et seq.) and all regulations adopted under that legislation, as that legislation and those regulations may be amended from time to time.

"MANAGER" means the person, MEMBER agency or firm hired or contracted by the BOARD as the AUTHORITY'S administrative officer to manage the affairs of the AUTHORITY and to effect the policies of the BOARD.

"MEMBER" means any of the governing bodies of the signatories to this AGREEMENT and "MEMBERS" means all of the governing bodies of the signatories to this AGREEMENT.

"REVENUE BONDS" means revenue bonds, notes, certificates of participation or any other instruments or evidences of indebtedness issued, executed, or delivered by the AUTHORITY from time to time pursuant to the GOVERNMENT CODE or any other applicable law in order to finance the TRANSFER FACILITY and/or any financial aspects of closed landfill maintenance.

"SERVICE AREA" means those areas from which the TRANSFER FACILITY will accept SOLID WASTE for processing, transportation, and disposal. The TRANSFER FACILITY need not be located within the SERVICE AREA. The SERVICE AREA shall include all areas within the City of Vallejo and within Napa County Garbage Service Zone One (as defined in the December 18, 1990 Napa County Franchise Agreement No. 882), the unserved areas adjacent to Napa County Garbage Service Zone One, and a portion of Solano County limited to those islands of unincorporated areas completely surrounded by the City of Vallejo and those areas contiguous to the City of Vallejo that are contained in the City of Vallejo's sphere of influence as defined by the Solano County Local Agency Formation Commission. If and when any additional cities join the AUTHORITY pursuant to Section 2.2, the SERVICE AREA shall also include all areas within the joining City or Cities. Until such joinder, the areas within such Cities shall be deemed to be within the SERVICE AREA only as to the self haulers of SOLID WASTE and/or franchised collection companies of SOLID WASTE who have entered into direct agreements with the AUTHORITY to deliver such SOLID WASTE to the TRANSFER FACILITY.

"SOLID WASTE" means the type of wastes commonly collected by MEMBERS' franchised SOLID WASTE collectors including putrescible and nonputrescible solid, semisolid and liquid wastes, including garbage, trash, refuse, paper rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes. SOLID WASTE does not include source separated recyclable or compostable materials intended for collection as part of a MEMBER's collection and/or recycling franchise. SOLID WASTE does not include any wastes defined as "hazardous wastes" under federal or state laws or regulations.

"TRANSFER FACILITY" means a SOLID WASTE facility, including any accessory facilities related thereto, meeting the requirements of a "transfer or processing station" under Section 40200 of the California Public Resources Code, for the receiving, processing, recycling and transportation of SOLID WASTE and the recovery of materials from such SOLID WASTES, which facility is owned either by the AUTHORITY and/or by a private entity, but in all events is operated for the benefit of the AUTHORITY and the MEMBERS.

SECTION 2. FORMATION

- 2.1 South Napa Waste Management Authority. Pursuant to the GOVERNMENT CODE, the MEMBERS do hereby create, form and establish the AUTHORITY, a public entity to be known as the "SOUTH NAPA WASTE MANAGEMENT AUTHORITY", it being understood that the BOARD shall be entitled to change the AUTHORITY's name from time to time if it so chooses. The AUTHORITY shall be a public entity separate and distinct from each of the MEMBERS.
- 2.2 Additions. Any city located within the SERVICE AREA may join the AUTHORITY, upon approval of the MEMBERS with the consultation of bond counsel. Such approval shall not be granted unless and until these jurisdictions shall have successfully entered into agreements, satisfactory to the AUTHORITY, which direct their franchised hauler(s) to deliver all SOLID WASTES collected under such franchise(s) to the TRANSFER STATION for processing, transportation and disposal. Such agreements may, but are not required to be part of their franchise agreements.

SECTION 3. PURPOSE

- 3.1 General. The AUTHORITY is formed for the purpose of providing economical coordination of SOLID WASTE management services and the ability to develop assurance against adverse effects of past SOLID WASTE management services within the SERVICE AREA.
- 3.2 TRANSFER FACILITY. The general purpose includes, but is not limited to, the purpose of providing economical coordination of SOLID WASTE processing, transfer and disposal services, including but not limited to the acquisition, construction, financing, refinancing, maintaining, operating, rate setting, rate collection, and regulation of a TRANSFER FACILITY.

- 3.3 Financial Aspects of Closed Landfill Maintenance. The general purpose also includes, but is not limited to, the ability to establish and fund pooled insurance and other financial mechanisms to provide, in the event of landfill owner default, for long term safe maintenance of closed landfills located within and formerly serving part or all of the SERVICE AREA, for the general purpose of protecting the health and safety of the public within the SERVICE AREA and the specific purpose of protecting the general funds of the MEMBERS against any possible "generator" liability under state or federal laws and regulation for adverse effects of such closed landfills as such liability, if unfunded, might impair the long term ability of the MEMBERS to act jointly as the AUTHORITY for the purpose of handling the future SOLID WASTE of the SERVICE AREA. Such purpose does not include any physical or other direct management of such closed landfills.
- 3.4 Common and Additional Powers. The AUTHORITY's purpose also includes the establishment of the AUTHORITY as an independent joint powers entity to enable the MEMBERS to jointly exercise the common powers of the MEMBERS set forth in Section 3.1 and for the exercise of such additional powers as are conferred under Section 6 or conferred by the GOVERNMENT CODE upon all joint powers authorities.

SECTION 4. ORGANIZATION

- 4.1 Composition. The AUTHORITY shall be composed of the City of Vallejo and the County of Napa.
- 4.2 Principal Office. The principal office of the AUTHORITY shall be established by the BOARD. The BOARD may change that principal office upon giving at least 15 days written notice to each MEMBER and to the California Integrated Waste Management Board.
- 4.3 BOARD. The AUTHORITY shall be governed by the BOARD of DIRECTORS, which shall exercise or oversee the exercise of all powers and authority on behalf of the AUTHORITY.

4.4 DIRECTORS.

- (a) The BOARD shall consist of two DIRECTORS. Each MEMBER shall appoint one DIRECTOR. Upon execution of this AGREEMENT by a MEMBER, the MEMBERS shall appoint its representative to the BOARD and at least one person as an alternate to serve in the case of absence or conflict on the part of the appointed DIRECTOR. Thereafter, vacancies shall be filled by the appointing MEMBER within thirty (30) days of the occurrence thereof. Each DIRECTOR and alternate shall be an elected official of the governing body of the MEMBER that he or she represents. If a DIRECTOR or alternate ceases holding any such elected position, he or she shall then cease to serve as a DIRECTOR or alternate. The AUTHORITY and the BOARD shall be entitled to rely on a written notice from the City Clerk (in the case of the City) and the County Clerk (in the case of the County) as conclusive evidence of the appointment and removal of the DIRECTORS and/or alternates representing that MEMBER.
- (b) Each DIRECTOR and alternate shall hold office from the first meeting of the BOARD after appointment by the MEMBER, until his or her successor is selected by the MEMBER that appointed that DIRECTOR. Each DIRECTOR and alternate shall serve at the pleasure of the MEMBER that he or she represents and may be removed at any time, without cause, at the sole discretion of that MEMBER.
- (c) No compensation shall be received by any DIRECTOR or alternate unless expressly provided by unanimous resolution of the BOARD.

SECTION 5. PERSONNEL AND ADMINISTRATION

- 5.1 Employees. The AUTHORITY may have its own employees or may contract with a MEMBER agency or firm for the furnishing of any necessary staff services associated with or required by the AUTHORITY.
- 5.2 MANAGER. Except and until the AUTHORITY exercises its option to have its own employees or contractors, the MANAGER of the AUTHORITY shall be an employee of the County of Napa and come under the County's personnel regulations. The County Board of Supervisors shall be solely responsible for the appointment, employment, evaluation of performance, or dismissal of the MANAGER, until the AUTHORITY exercises its options to have employees or contractors.

- 5.3 Support Services. Except and until the AUTHORITY exercises its option under the GOVERNMENT CODE and Section 5.1 of the AGREEMENT, the County of Napa will provide support services to the AUTHORITY including all legal, financial, accounting, data processing, secretarial, purchasing and personnel services. Such services and their costs will be included in the annual budget referred to in Section 8.2.

SECTION 6. POWERS

- 6.1 TRANSFER FACILITY. The AUTHORITY is empowered to acquire, construct, finance, refinance, operate, regulate, set rates for and maintain a TRANSFER FACILITY subject, however, to the conditions and restrictions contained in this AGREEMENT.
- 6.2 Approved Powers. To the full extent permitted by applicable law (including specifically the ACT and the GOVERNMENT CODE), the AUTHORITY is authorized, in its own name, to do all acts necessary or convenient for the exercise of such powers enumerated in the ACT or that each MEMBER could exercise separately including, without limitation, any and all of the following:
- (a) to sue and be sued in its own name;
 - (b) to incur and discharge debts, liabilities and obligations;
 - (c) to issue REVENUE BONDS, from time to time, in accordance with all applicable laws for the purpose of raising funds to finance or refinance the acquisition, construction, improvement, renovation, repair, operation, regulation or maintenance of the TRANSFER FACILITY and/or related facilities;
 - (d) to exercise the power of eminent domain for the acquisition of real and personal property for the TRANSFER FACILITY and access thereto or for the acquisition of the TRANSFER FACILITY itself;
 - (e) to acquire, improve, hold, lease and dispose of real and personal property of all types;
 - (f) to sell or lease the TRANSFER FACILITY;

- (g) to establish rates, tolls, tipping fees, other fees, rentals and other charges in connection with the TRANSFER FACILITY, as well as any and all services provided by the AUTHORITY, and to include in such rates and charges amounts necessary to carry out those purposed described in Section 3 of this AGREEMENT;
- (h) to require that the MEMBERS direct all of the SOLID WASTE collected by MEMBERS' franchised garbage collectors to the TRANSFER FACILITY;
- (i) to require that the MEMBERS direct all SOLID WASTE generated by MEMBERS to the TRANSFER FACILITY; provided, however, this subsection shall not apply to recyclables nor to SOLID WASTE generated by MEMBERS outside the SERVICE AREA;
- (j) to enforce the provisions of MEMBER'S garbage collection agreements that require that all SOLID WASTE collected be delivered to the TRANSFER FACILITY;
- (k) to contract for the processing, transportation and/or disposal of SOLID WASTE delivered to the TRANSFER FACILITY;
- (l) to make and enter into contracts, including contracts with any MEMBER, and to assume existing contracts made by any MEMBER relating to the TRANSFER FACILITY;
- (m) to reimburse the MEMBERS for the costs of services provided to the AUTHORITY;
- (n) to hire agents and employees;
- (o) to employ or contract for the services of engineers, attorneys, accountants, planners, consultants, fiscal agents and other persons and entities;
- (p) to apply for and accept grants, advances and contributions;
- (q) to make plans and conduct studies;
- (r) to coordinate efforts with the established local, regional and state waste management agencies; and

- (s) upon default by the owner or operator of a closed landfill within the SERVICE AREA, to make payments for closure and post-closure maintenance for the purposes set forth in Section 3.3 of this AGREEMENT, and to seek reimbursement for such payments from any person or entity (other than any MEMBER) having a legal responsibility for such payments.
- 6.3 Limitations. Such powers shall be exercised subject only to the limitations set forth in this AGREEMENT, applicable law and such restrictions upon the manner of exercising such powers as are imposed by law upon the County of Napa in the exercise of similar powers.
- 6.4 Noncompetition. The AUTHORITY shall not provide any recycling services that duplicate or compete with recycling services provided by any MEMBER (at the time the AUTHORITY determines to provide new or expanded recycling services) without consent of the MEMBER. A MEMBER shall not contract with any TRANSFER FACILITY that duplicates or competes with the services provided by the AUTHORITY without consent of the BOARD.
- 6.5 Possible Future Responsibilities and Duties. Upon future approval and agreement by all of the MEMBERS, the AUTHORITY may conduct other related waste management responsibilities and duties.
- 6.6 Individual MEMBER Services. Upon approval of the BOARD and the governing body of a MEMBER, the AUTHORITY may contract to provide other related waste management responsibilities and duties, individually for that MEMBER. These contracted services will be paid for solely by the contracting MEMBER.

SECTION 7. FINANCE

7.1 Assets, Rights, Debts, Liabilities and Obligations.

- (a) Except as provided in subsection (b), (c) and (d) below, the assets, rights, debts, liabilities and obligations of the AUTHORITY shall not constitute assets, rights, debts, liabilities or obligations of any of the MEMBERS. However, nothing in this AGREEMENT shall prevent any MEMBER from separately contracting for, or assuming responsibility for, specific debts, liabilities or obligations of the AUTHORITY, provided that both the BOARD and that MEMBER give prior approval to such contract or assumption.
- (b) The MEMBERS hereby agree that any defense against claims, as well as the cost of any judgments imposed for tort claims resulting from actions by the AUTHORITY or any of the officers, agents, employees, or contractors of the AUTHORITY in relation to the TRANSFER FACILITY, are primarily a cost of operating the TRANSFER FACILITY and shall therefore be paid for ultimately through surcharges uniformly imposed on the rates charged to users of the TRANSFER FACILITY; except that if the liability arises under CERCLA or its successors as the result of contamination at a landfill to which SOLID WASTE is transported by the TRANSFER FACILITY at the specific request of a collector or other user rather than by bids solicited by the AUTHORITY, then the surcharges to recover the costs of defense and judgment shall be imposed only on the rates charged to that collector or user.
- (c) To the extent that MEMBERS are also held jointly and severally liable for such amounts by Government Code Section 895.2, if a MEMBER provides for such defense of itself or the AUTHORITY, or pays all or part of such judgment, the MEMBER shall be entitled to reimbursement in full from the AUTHORITY. Such reimbursement to be paid over such time as is necessary for the collection of the corresponding reasonable user surcharges.

- (d) To the extent that MEMBERS are held responsible by third parties for tort claims as a result of activities of the AUTHORITY, pursuant to Government Code Section 895.2, and the AUTHORITY has ceased to exist or has ceased to operate a TRANSFER FACILITY or other enterprise capable of generating enough revenue to defend against and pay for such claims, each MEMBER shall be entitled to seek reimbursement from the other MEMBER(S) for the costs of providing the defense against such tort claims or payment of any judgments lawfully imposed in connection therewith to the extent that the amounts paid by the MEMBER exceed that proportion of the total cost which exceeds (1) the ratio of the tonnage of SOLID WASTE generated within the jurisdiction of the MEMBER, collected by franchised companies, and processed by the TRANSFER FACILITY in the FISCAL YEAR of the occurrence of the incident giving rise to liability to the total tonnage processed by the TRANSFER FACILITY during said FISCAL YEAR, plus, (2) the inverse of the number of MEMBERS multiplied by the ratio of that tonnage to the tonnage of self hauled SOLID WASTE processed at the TRANSFER FACILITY in said FISCAL YEAR to the total tonnage processed by the TRANSFER FACILITY during said FISCAL YEAR.

- 7.2 Budget. A budget for the AUTHORITY shall be adopted by the BOARD for the ensuing FISCAL YEAR prior to June 30 of each year. The budget shall include sufficient detail to constitute an operating guideline. It shall also include the anticipated sources of funds, and the anticipated expenditures to be made for the operations of the AUTHORITY including, but not limited to, the acquisition or construction of the TRANSFER FACILITY and related site improvements, administration, special projects, maintenance and operating costs of the TRANSFER FACILITY. Approval of the budget by the BOARD shall constitute authority for the MANAGER to expend funds for the purposes outlined in the approved budget, but subject to the availability of funds on hand as determined by the Auditor-Controller; provided that this shall not be construed to limit the power of the BOARD to modify the budget in whatever manner it deems appropriate and instruct the MANAGER accordingly.

7.3 Rates.

- (a) The BOARD shall establish rates to be charged at the TRANSFER FACILITY in amounts sufficient to provide for the efficient operation of the TRANSFER FACILITY, including administrative, processing, transportation and disposal costs, to discharge all indebtedness and liabilities relating to the acquisition and construction of the TRANSFER FACILITY (including, without limitation, any REVENUE BONDS issued in connection therewith) and the operation of the TRANSFER FACILITY, to insure against future liabilities of the TRANSFER FACILITY and of MEMBERS resulting from "generator" status under state and federal laws and regulations relating to landfills experiencing illegal discharges of hazardous substances, to the extent that status pertains to SOLID WASTE generated at any time within the SERVICE AREA, and to accommodate the planning and implementation of activities incidental thereto.
- (b) The AUTHORITY shall provide at least thirty (30) days advance written notice to its MEMBERS of any intent to increase or decrease rates to be charged at the TRANSFER FACILITY. To the extent possible, the AUTHORITY shall coordinate the effective date of rate increases or decreases with the MEMBERS' annual garbage collection rate setting processes.

SECTION 8. RULES OF CONDUCT

- 8.1 Bylaws. The BOARD, from time to time, may adopt bylaws for the conduct of the AUTHORITY's affairs, provided that they are not inconsistent with this AGREEMENT.
- 8.2 Officers and Committees. The BOARD may designate such officers and establish such committees as may be necessary or convenient to conduct the AUTHORITY's affairs.
- 8.3 Voting.
 - (a) Each DIRECTOR shall have one vote on all matters presented to the BOARD for a vote.
 - (b) The vote of two of the DIRECTORS shall constitute the act of the BOARD.

- 8.4 Quorum. Two DIRECTORS shall constitute a quorum for the transaction of business of the BOARD except that if there is less than a quorum present, the DIRECTOR who is present, or the MANAGER may adjourn any meeting.

SECTION 9. TERM

- 9.1 The AUTHORITY and this AGREEMENT shall become effective as of March 17, 1993 and shall continue in full force and effect until amended pursuant to Section 11 or until dissolved pursuant to Section 10 of this AGREEMENT. However, in no event shall the AUTHORITY be dissolved until all of the AUTHORITY's obligations and liabilities respecting all REVENUE BONDS are satisfied, discharged, or terminated or until the provisions of Section 10.2 are complied with.

SECTION 10. DISSOLUTION.

- 10.1 Assets. Subject to the then-applicable requirements of the GOVERNMENT CODE, upon dissolution of the AUTHORITY, the assets of the AUTHORITY remaining after payment of or adequate provision for all debts, liabilities and obligations of the AUTHORITY shall be divided among the MEMBERS in accordance with an unanimous agreement among them or, in the absence of such an agreement, in proportion to the total tonnage of SOLID WASTE, over the life of the TRANSFER FACILITY, (exclusive of SOLID WASTE delivered by self haulers) each MEMBER caused to be delivered to the TRANSFER FACILITY. Any assets that are not conveniently divisible shall be sold at a duly noticed public auction, in which case the net proceeds from the sale shall be divided among the MEMBERS in accordance with that agreement or, in the absence of such an agreement, those same proportions. In-kind contributions shall be returned to the donating MEMBER.

10.2 REVENUE BONDS.

- (a) If any REVENUE BONDS are outstanding, the MEMBERS shall cause to be delivered to the REVENUE BOND trustee(s):
 - (i) an opinion of nationally recognized bond counsel substantially to the effect that such dissolution will not cause the interest on the outstanding REVENUE BONDS to be included in gross income for federal income tax purposes; and

(ii) evidence from each rating agency then rating the outstanding REVENUE BONDS that such dissolution will not adversely affect the rating of such REVENUE BONDS.

(b) Approval of any request to dissolve shall not be unreasonably withheld; provided, however, that if any REVENUE BONDS are outstanding at the time the request is made or acted upon, financial assurances are made by the MEMBERS that will assure continued payment of the MEMBERS' share of the outstanding indebtedness which is acceptable to the other MEMBERS, the AUTHORITY, and the REVENUE BOND trustee(s) and their respective counsel. Approval of such financial assurances by an independent financial consultant selected by the BOARD shall be required.

10.3 Effective. No dissolution shall be effective unless and until the AUTHORITY and MEMBERS comply with any then-applicable requirements of the GOVERNMENT CODE relating to changes in the composition of entities such as the AUTHORITY; and if and when they have REVENUE BONDS issued by the AUTHORITY outstanding, comply with all of the terms and conditions of all REVENUE BONDS and related documentation including, without limitation, indentures, trust agreements, resolutions and letter of credit agreements.

SECTION 11. AMENDMENTS

11.1 This AGREEMENT may only be amended by a written instrument approved in accordance with this AGREEMENT and meeting any requirements imposed by the terms or conditions of all REVENUE BONDS and related documentation including, without limitation, indentures, trust agreements, resolutions and letter of credit agreements. Notwithstanding the foregoing, no amendment shall require any MEMBER to contribute any funds to the AUTHORITY or become directly or contingently liable for any debts, liabilities or obligations of the AUTHORITY without the consent of that MEMBER evidenced in a written instrument signed by a duly authorized representative of that MEMBER.

SECTION 12. FILING WITH THE SECRETARY OF STATE

12.1 The MANAGER shall file all required notices with the Secretary of State in accordance with California Government Code Sections 6503.5 and 53051, as such may be amended from time to time.

SECTION 13. NOTICES

13.1 All notices which any MEMBER or the AUTHORITY may wish to give in connection with this AGREEMENT shall be in writing and shall be served by personal delivery during usual business hours at the principal office of the MEMBER or AUTHORITY, to an officer or person apparently in charge of that office, or by depositing the same in the United States mail, postage prepaid, and addressed to the MEMBER or AUTHORITY at its principal office, or to such other address as the AUTHORITY or MEMBER may designate from time to time by written notice given to the other MEMBERS in the manner specified in this Section. Service of notice pursuant to this Section shall be deemed complete on the day of service by personal delivery (but 24 hours after such delivery in the case of notices of special meetings of the BOARD) or three (3) days after mailing if deposited in the United States mail. Until changed by written notice to the AUTHORITY and the MEMBERS, notice shall be delivered as follows:

CITY OF VALLEJO:	Vallejo City Manager 555 Santa Clara Street Vallejo, CA 94590
COUNTY OF NAPA:	Clerk of the Board of Supervisors 1195 Third Street, Room 310 Napa, CA 94559
AUTHORITY:	South Napa Waste Management Authority County Administrator 1195 Third Street, Room 310 Napa, CA 94559

SECTION 14. SUCCESSORS AND ASSIGNS

14.1 This AGREEMENT shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the MEMBERS. However, no MEMBER shall assign any of its rights under this AGREEMENT except to a duly formed public entity organized and existing under the laws of the State of California and then only when approved in accordance with this AGREEMENT. No assignment shall be effective unless and until the AUTHORITY, the MEMBERS and the proposed assignee comply with all then-applicable requirements of the GOVERNMENT CODE relating to changes in the composition of entities such as the AUTHORITY and, if and when they have REVENUE BONDS outstanding, in compliance with the terms and conditions of all REVENUE BONDS and related documentation including, without limitation, indentures, trust agreements, resolutions and letter of credit agreements.

SECTION 15. SEVERABILITY

15.1 Should any part, term or provision of this AGREEMENT be decided by a final judgement of a court or arbitrator to be illegal or in conflict with any law of the State of California or otherwise be unenforceable or ineffectual, the validity of its remaining parts, terms and provisions shall be not be affected.

SECTION 16. SECTION HEADINGS

16.1 All section headings contained in this AGREEMENT are for convenience and reference. They are not intended to define or limit the scope of any provision of this AGREEMENT.

SECTION 17. ARBITRATION

17.1 All disputes that arise in connection with the interpretation or performance of this AGREEMENT shall be resolved on an equitable basis by a single arbitrator under the commercial arbitration rules of the American Arbitration Association. The arbitrator's decision shall be final and binding on the AUTHORITY, all MEMBERS and all former MEMBERS involved or affected by the dispute. The AUTHORITY, any MEMBER and any former MEMBER that is party to the dispute may enforce any award, order or judgement of the arbitrator in any court of competent jurisdiction.

SECTION 18. LAW TO GOVERN

18.1 It is understood and agreed by the parties that the law of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this AGREEMENT and shall govern the interpretation of this AGREEMENT.

SECTION 19. ENTIRETY

19.1 The MEMBERS agree that this AGREEMENT represents the full and entire agreement between the MEMBERS hereto with respect to matters covered herein. This AGREEMENT supersedes any and all other communications, representations, proposals, understandings or agreements, either written or oral, between the MEMBERS hereto with respect to such subject matter.

SECTION 20. WAIVER

20.1 A waiver of any breach of any provision of this AGREEMENT shall not constitute or operate as a waiver of any other breach of such provision or of any other provision, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.